

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE

PASADENA SELF-STORAGE, LTD.
Debtor

§
§
§
§

CASE NO. 10-33790
(Chapter 11)

**CITY NATIONAL BANK'S MOTION FOR SANCTIONS
AGAINST THE DEBTOR FOR DISCOVERY ABUSES**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, City National Bank ("CNB"), successor to Imperial Capital Bank, and files this it's Motion for Sanctions Against the Debtor for Discovery Abuses ("Motion") and would show as follows:

1. Pasadena Self Storage, Ltd. ("Debtor") filed for chapter 11 bankruptcy relief on May 4, 2010.
2. On June 9, 2010, CNB filed its Motion for Relief from Stay and on June 24, 2010 the Debtor filed its response.
3. On June 17, 2010, CNB served on Debtor's counsel, CNB's Request for Production of Documents to Pasadena Self Storage, Ltd. A true and correct copy of the Request is attached hereto as Exhibit A. On June 30, 2010, Debtor's counsel objected to the date of the requested delivery of the documents, but did not otherwise object to CNB's discovery request. A true and correct copy of the Debtor's objection is attached hereto as Exhibit B.
4. On September 11, 2010, CNB's counsel e-mailed Debtor's counsel requesting a response to the discovery request. On September 22, 2010, CNB's counsel sent another e-mail to Debtor's counsel requesting a response to the discovery request. Thus far, Debtor has totally ignored the Document Production request and has produced no documents in response to same. A copy of the e-mails are attached hereto as Exhibit C.

5. CNB's Motion to Lift the Stay is a contested matter *Grella v. Salem Five Cent Savings Bank*, 42 F.3d 26 (1st Cir. 1994). Bankruptcy Rule 9014(c) makes Bankruptcy Rules 7028-7037 applicable to contested matters. B.R. 9014(c). Bankruptcy Rule 7034 incorporates Federal Rule of Civil Procedure 34 which allows for the request for production of documents.

6. Bankruptcy Rule 7037 incorporates Federal Rule of Civil Procedure 37, which allows for sanctions for a failure to respond to discovery.

7. The Debtor's failure to produce the documents requested is the result of a deliberate and dilatory course of conduct on behalf of the Debtor, which significantly prejudices CNB and interferes with this Court's judicial process, as such the Debtor's answer to the Motion for Relief from the Stay should be stricken. *In re Daily*, 47 F.3d 365 (9th Cir. 1995).

8. Pasadena Self Storage, Ltd. has, in its answer, alleged, notwithstanding contrary sworn statements in the schedules, that CNB is an oversecured creditor. *See*, Debtor's Answer, ¶¶ 3, 6, 12 and 14. CNB requested documents regarding valuation in request for production numbers 1, 2, 3, 4 and 5. *See*, Exhibit A.

9. In paragraph 10 of the Motion to Lift, CNB alleged that cause existed for lifting the stay due to the \$320,000.00 repaid to Messrs. Davis and Limer, the \$280,000.00 loan to Silver Oak Investment and the \$510,000 loan to an affiliate. *See*, Motion to Lift, ¶10. The Debtor denied the allegations of paragraph 10 of CNB's Motion. *See*, Answer ¶10.

10. CNB requested documents regarding the payments to Messrs. Davies and Limer. *See*, Exhibit A, Request regarding Nos. 6 and 8. CNB requested documents regarding the \$510,667.67 loan made by the Debtor to Cypresswood Self-Storage, Ltd., the \$287,719.95. *See*, Exhibit A, Request Nos. 6, 7 and 8.

11. A reasonable sanction for the Debtor's failure to produce the documents is to strike the Debtor's response to CNB's allegations in paragraph 3, 6, 10, 12 and 14.

WHEREFORE, PREMISES CONSIDERED, City National Bank, successor to Imperial Capital Bank respectfully prays that this Court strike the Debtor's response to CNB's allegations in paragraphs 3, 6, 10, 12 and 14, order Debtor to produce all responsive documents to the undersigned within 10 days of the Court's order, and for such other and further relief to which CNB may show itself justly entitled.

Respectfully submitted,

OF COUNSEL:

HIRSCH & WESTHEIMER, P.C.

By: /s/ Michael J. Durrschmidt

Michael J. Durrschmidt

Admissions I.D. No. 4720

State Bar No. 06287650

25th Floor, Bank of America Center

700 Louisiana

Houston, Texas 77002-2728

TEL: (713) 220-9165

FAX: (713) 223-9319

ATTORNEYS FOR CITY NATIONAL BANK

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing City National Bank's, successor to Imperial Capital Bank, Motion for Sanctions against the Debtor for Discovery Abuses was served by first class mail, postage prepaid, facsimile and/or electronic mail by the Clerk of the Court via the ECM/ECF system, as listed below on October 6, 2010.

Pasadena Self-Storage, Ltd.
3030 Old Ranch Parkway, Suite 190
Seal Beach, CA 90740

Patrick D Devine
5120 Woodway Dr., Suite 8002
Houston, Texas 77056

Christine A March
Office of the United States Trustee
515 Rusk St., Suite 3516
Houston, Texas 77002

Jason Starks
Assistant Attorney General
c/o Sherri K. Simpson
PO Box 12548
Austin, Texas 78711

Tara Grundemeier
Lienbarger Goggan Blair &
Sampson LLP
PO Box 3064
Houston, Texas 77253

Imperial Capital Bank
500 N Brand Blvd., Suite 1500
Glendale, CA 91203

Leo Vasquez
Harris Co. Tax Assessor
PO Box 4622
Houston, Texas 77210

East Bay Construction
2124 Main Street, Suite 145
Huntington Beach, CA 92648

Texas State Comptroller
PO Box 149348
Austin, Texas 78714

Goodrich Goodyear & Hinds
6700 E Pacific Coast Hwy, Suite
255
Long Beach, CA 90803

AFS/EBEX Financial Services
PO Box 10045
Pasadena, CA 91189

Best Publications
100 Perkins Street, Suite C
League City, TX 77573

W.B. Lockhart & Co
PO Box 35375
Houston, Texas 77235

Yellow Book USA – West
PO Box 660052
Dallas, Texas 75266

EMR Services
2931 Thorne Creek
Houston, Texas 77073

Reliant Energy
PO Box 650475
Dallas, Texas 75265

AT&T
PO Box 5001
Carol Stream, IL 60197

Golf Carts of Houston Mgmt
d/b/a South Houston Golf Carts
3123 Westside Drive
Pasadena, TX 77504

AT&T Advertising Solutions
PO Box 5010
Carol Stream, IL 60197

C&C Contractors
5128 Eula Avenue
Pasadena, Texas 77505

G5 Search Marketing, Inc.
550 NW Franklin Avenue, Suite 200
Bend, OR 97701

Phonesmart
Box U
Columbia, MO 65205

On the Move, Inc.
PO Box 1137
Boerne, Texas 78006

Salinas Installations
12303 Gulf Freeway, Apt. 1604
Houston, Texas 77034

Purchase Power
PO Box 856042
Louisville, KY 40285

/s/ Michael J. Durrschmidt
Michael J. Durrschmidt